

Dick Wiley: And I think it's fair to say that the leadership of both Commerce committees has a lot of respect and liking for the current chairman. I think Chairman Powell has an opportunity therefore to move in the direction that he wants to without any feeling that there's going to be any kind of legislative effort to block his effort.

Victor Miller: Uh, the appeals—this is for Greg—the appeals court threw out the cable broadcast cross-ownership rule. The FCC decided not to take it up in its NPRM...and you could argue that out of all the ownership rules, local ownership rules, that could be the most offensive; that a cable system could actually buy a TV station in the local market but, yet, a local TV station can't buy another one in St. Louis, for example; and a newspaper can't buy a TV station because of the cross-ownership rules and the eight voice test. What's...is that a very important thing or am I just kind of reading too much into that?

Greg Schmidt: I think it happened largely because of the procedural posture in which things came up. I mean, the cable rule had not been vigorously contested below and there really wasn't much of a record. It is peculiar, and I agree with Shaun, who made the comment earlier, that if I had any one combination in my market that would worry me it would be cable and my largest broadcast competitor. And that's now fair game. And the fact that I can...in markets where there are seven stations I can't have [or]...go and

buy a WB where I have a Fox affiliate seems completely upside down. But I think the courts...the basic message coming out of the courts, and this one, it's kind of amazing it went on this long. I mean, we had a series of rules that said, we consider radio and television to be competitors, therefore, we're going to have a rule that limits the number of those you can have. We consider cable and broadcast to be competitors and we're going to eliminate that combination. We consider newspaper and broadcasting to be competitors and we're going to limit that. But then when we look at broadcast-only we don't regard any of them as competitors. I mean, that was so on its face inconsistent that they said, we're not going to go along with this anymore, we're going to make you do something rational here. And that's going to get them into some very interesting questions as to how [to] reconcile all of those different proceedings and they've made a great start at it. But I think that's the role the courts played and I don't think that's going to change, materially. They may not have, I think, enough information in front of them to make some rational decisions at the margin as to which of these rules is really important and which is not. But I think in terms of the overall responsibility of making the Commission do things that are, on their face, rational, they're doing a pretty good job.

Victor Miller: Talk about the concept of a voice. What, what would—if you were the chairman of the FCC how would you handle the whole concept of what a voice is or would you just abandon that?

Greg Schmidt: The voice concept really flows out of the diversity. Of course, we have the two objectives that the Commission pursues: one is competition and the other is diversity. And diversity gets you into all the slippery slope issues of whether it's program, viewpoint, outlook, outlet, diversity and gets into a real...you can get yourself tied into some nice pretzels trying to define it in the right way. What it seems to indicate, at least in the competitive sense, and I have a problem with the diversity analysis generally, by the way, just in how you would have an objective that would go beyond a perfectly competitive marketplace. In theory, if you have a perfectly competitive marketplace you've got an optimal number of outlets. If you try and legislate additional outlets they will not be able to compete and, ultimately, someone will go out of business and you'll get back down to the optimal level. Alternatively, if you restrict the number below the optimal level the solution is to simply make the market more competitive and it's not clear what diversity, in and of itself adds to that...at least in terms of being able to long-term increase the number of outlets. But I think the conundrum the Commission faces here is trying to define...is trying to put weight on these various voices the same way that you

would, say, in a competitive analysis—where you're defining substitutability or cross-elasticity of demand...how do you define cable as a voice? It's obviously different in markets where there's a twenty-four hour cable news channel than it is where there's simply, thirty-six or fifty-four or a hundred and fifty-four national cable channels. If the operator, the cable operator themselves is having an input in terms of the local news content or information that's different than if they're not; but how different? And how much should you weight that? The same thing goes for radio and weekly newspapers versus daily. I think it's very, very difficult to get into this with any degree of precision and be able to support it based on any sort of empirical evidence that's in the record or even out of the studies that the Commission's come up with now. And I think that's going to lead, to some extent, to some sort of bright lines like rule, no rule, in certain situations that...we'll have to see whether the courts—how much leeway the courts will give them when they come up with that?

Victor Miller: Well, Dick, if you were chairman again what would you do...?
[laughs]

Dick Wiley: Well, whatever you do, I agree with what Greg says, but whatever you do you've got to have consistency. That's where the court dinged the Commission in a number of instances. For example, in the duopoly rule, you have to have eight independent full time

television stations. In the radio or television cross-ownership rule, they counted cable and newspapers, you can't have that kind of inconsistency. And, also, you've got to have a rationale for these rules, which the court found on numerous occasions were very thin. And, so, the Commission knows and Chairman Powell knows this. That's why they've thrown all these rules into one comprehensive rule making so they can come out with a consistent treatment, one that has some rationale. My own guess is that he's going to be looking for a competitive analysis of some kind—it may be a voice test, it may be some sort of a point system; something with an antitrust background that shows what the true competitive conditions are. And I think, under those circumstances, I agree with what was said in previous situations, if you want to have a free over the air broadcast system, which, I think, is in the public interest, you've got to let it have an opportunity to grow and to converge into adjoining industries in order to be able to compete in the future against multichannel subscription-based services.

Victor Miller: Wade...oh, do you have a follow up?

Wade Hargrove: Yes, if you've not yet read it, those who...

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Wade Hargrove: [continuing, in mid-sentence] ...the analysis, forget about whether you agree with the conclusions or not. But the analysis was very thorough on the issue of competition. And there's some interesting things there...struck me. One, there was—the conventional wisdom was, among a lot of lawyers, when Chairman Powell assumed the chairmanship...that...that this Commission would probably not concern itself a lot with competitive issues—with competition issues but would be, perhaps, pre-disposed to defer to the Federal Trade Commission or the Justice Department and focus...this Commission would focus its efforts on the diversity issue and general public interest considerations—not so. Not so at all. If you read the Echo Star/Direct TV...a hundred and thirty-five page decision, probably a hundred and thirty of those pages are directed to a competition analysis. And that analysis might very well be the road map that the commission and the staff—that we could expect to see taken and the analysis of, at least the competition component of these other ownership issues and local markets and the national cap. Very little was said about program diversity in the Echo Star/Direct TV merger. The Commission held that on the issue of program diversity there would not be a lessening of program diversity with the merger, but there would be a lessening of source diversity. But the focus and all the heat and light were on competition and I encourage you to look at that. And,

I think that those who have an interest in the relaxation of the other ownership rules will want to look at that road map and see if it...if their rationale for whatever position they may be advocating could be fitted into the analysis there; it was very well done.

Victor Miller: Can you talk to us a little bit, Dick, about the Jonathan Adelstein? Is that how you pronounce...?

Dick Wiley: Adelstein, I think...Adelstein? Adelstein.

Victor Miller: I mispronounce that name.

Dick Wiley: Well, we'll all get to know it well here.

Victor Miller: He was confirmed.

Wade Hargrove: In a couple of weeks we'll know it very well.

Victor Miller: Can you provide some background on him?

Dick Wiley: Well, he's of course, an aid to Senator Daschle, he's been up there a long time. He's from South Dakota. His father, interesting enough, is not only a businessman but a Republican state legislator. So he's got a little bi-partisan background in there. Reportedly very well-liked on Capitol Hill, very smart, able guy. His views are—in our areas—are largely unknown. Some people are guessing that he's going to be closer to cops than to, say, some of the conservative Republican majority. But we'll have to see. We're going to give him the opportunity to establish his own credentials, it seems to me.

Victor Miller: Any follow up, Greg? Or are you just going to smile?

Greg Schmidt: I mean, he clearly is...he clearly has a mandate to watch out for the rural interests but I'm not sure how that cuts in these proceedings. It may help us in terms of the small market relief that people are looking for but it may not.

Wade Hargrove: It could cut either way.

Victor Miller: The FCC in conjunction with the release of its NPRM released twelve or so white papers on various media ownership issues. Could you...do you have any highlights of anything that surprised you or you found out in these, if anything? And why did the FCC do the white papers? Is this a first?

Greg Schmidt: Well, they clearly did it, first of all, Victor, so that you could repackage them and present them at this conference. I mean, the Jonathan Levy paper has been incredibly well done and useful document. And...

Victor Miller: To my presentation.

Greg Schmidt: And I hope you're sending royalties over there...[laughter]. That...but that was a paper where

Victor Miller: I think that was a, no, from those guys...

Greg Schmidt: Not allowed? Most of it was, I think, Dick can jump in too but most of it, I think, was stuff—at least to some extent that we're all comfortable with and familiar with and documenting in some detail the increase in competition and number of outlets and media outlets over the last three decades. But since many of these rules

were changed....I found particularly interesting the fact that the analysis and some of these are going to be obviously parsed and taken apart by people who question the methodology and some...even the people on my side of the debates. But the finding that ad pricing...I mean, one of the big issues we face in TV is a sort of reaction to the consolidation in radio, both in terms of the belief that it may have affected radio pricing and radio programming diversity. And I think the studies that show at most a very small percentage of it with the radio ad pricing increases that we've seen—which had been substantial—were due to consolidation. And most of it was due to, in part, economic conditions...was significant. And the...the fact that program diversity hasn't suffered in any material way and even in some local levels has increased due to radio consolidation; I thought was very interesting also.

Dick Wiley:

I thought it was interesting that the study showed that O and Os and newspaper owned outlets do more news and public affairs, which seems to me, to help in connection with some of the rules changes. The combinations don't reflect a particular slant, that it's just as likely that those combinations will take different positions as other groups of stations; that there's been a tremendous growth in the number of outlets over the last couple of decades; and, in particular, that consumers and advertisers are continuing seeking a

substitutability of media—including the Internet—for television. A lot of younger people looking for news and public affairs to the Internet instead of television. And whether that's good news or bad news, as far as the rules are concerned, it's certainly...are good cases for alleviation of some of these age old restrictions, which, you could argue, are outmoded.

Victor Miller: Wade, do you have any follow up?

Wade Hargrove: No, I thought the studies were very constructive. And, whether you agree, depending on your point of view with the conclusions reached, this commission is certainly not, does not appear to be embarked on a process that will lead to the kind of comments from the court of appeals that the court has made with respect to its review of other decisions involving the ownership issues. It's a credit to Chairman Powell and the Commission and the staff that it has embarked upon this very thorough approach. There are a lot of...continued to be debate...among economists about the substitutability, as Dick mentioned, of these various media for advertising purposes. And it's always been interesting to me, I mean, if, indeed, radio and TV are not substitutes or newspaper not substitutes, why, for gosh sakes, would there be any concern about competition? I mean, if they don't compete in the same markets then the combination of newspaper and broadcast or combination of radio and television would not have any anti-competitive

effects. On the other hand, if you conclude that they are substitutes, and I think the conventional wisdom is, for the most part, they can be substituted. I mean, if you got to any television meeting—go to a TVB session, I've spent a lot of time talking about competing newspapers. Radio guys talk about competing with television. But the stark reality is, which cannot be denied, is that's there's enormous diversity in the study. The voices that you illustrated from the University of Missouri study? The statistics that were in the working papers, various parties in the newspaper broadcast proceeding, have already submitted voluminous information showing the number of voices and the great diversity that exists—even in the smallest markets. Hearst submitted a study that showed that nine of the smallest of the two hundred and ten DMAs have eleven separately owned voices applying the traditional test for a voice. And that doesn't take into account new media. So, there's an enormous amount of diversity at the local level and I think the question is for most of us is to what extent will the Commission in the context of this proceeding move the teutonic regulatory place of ownership? This proceeding, I think, everyone recognizes, has potential of being, as all those who live in California keep anticipating the real big one, and this is going to be a big, big event. And the evidence certainly indicates the Commission is approaching it in that fashion.

Victor Miller: Dick, just give us an update. What's the timing now on the comment period, the closing of the record on the NPRM?

Dick Wiley: Yes, the comments are...the initial comments are due January Second and then replies in February and the Commission has said that they're going to make a decision in spring. Now, if August and September are spring months, I think they can probably meet that. But, uh, being cynical...it is difficult to have major decisions like this get out in a couple of months after the...the comments close. On the other hand, the Commission always could consider certain first report and order and spin out some once they know where their major directions are—spin out some of these rules and decide some of them. The newspaper rule, for example, newspaper broadcast...the record closed on...closed on that proceeding last February. All those comments were in and all we're doing—and I do represent people in this area—is refreshing the record in that to some extent...answering some of the Commission's questions this time around. The Commission has lots and lots of information; they could move ahead on that decision earlier if they wanted to do and actually do it in the “spring.”

Wade Hargrove: Victor, I'd like to ask Dick and Greg a question. Last month, the court of appeals in a three vote majority decision and struck down the Commission's video description rules, a very interesting decision. If you haven't read it I commend it to you. The

Commission said, struck those rules down, because Judge Harry Edwards, a Democrat appointee to the court, held that to the extent that a commission regulation significantly implicates programming, and there is not a specific statutory authority to regulate in that area...the Commission would be acting without authority and could not regulate. And this has raised among a number of us, who toil in these vineyards, a lot of questions about the scope of the Commission's authority. What raises questions about any sort of decision that touches on programming...the question in my mind is does this place any sort of jeopardy over the Commission's ability to take program diversity into account? Is there anything in the act that says the Commission shall take diversity of programming into account when it makes its decisions?

Greg Schmidt: There have been a couple of Supreme Court cases.

Greg Schmidt: Well, I know, there are some Supreme Court and some court of appeals cases. But it is an interesting decision and it will be interesting to see where it goes.

Dick Wiley: Of course, the Commission has previously said that diversity was something that the Commission could look at, when they were questioning the grounds for some of these ownership rules before. So, if someone took the consistency of the court of appeals they might. If there was the Supreme Court looking at the court of

appeals they might have the same problem as the court does with the FCC. It's an interesting decision, I agree with you. I don't think you can push it too far, though.

Victor Miller: I'm glad you asked that question, Wade, because I could have never thought of that. Let's talk a little bit about some current events. Senator McCain suggested local TV stations should provide two hours of political time per week for a specified period of time prior to the elections.

Greg Schmidt: I think that's as viable constitutionally as the bill that's currently being challenge—McCain Feingold, which is to say, not. I mean it's a nice suggestion and in some markets and in some situations it may make sense. I think any sort of an across the board rule tends to do more damage than good in these kinds of situations. I think we all work really hard on that, on political. I don't think, as a general matter, consumers suffer from an underexposure to the candidates or their issues. But he's definitely on this one. Now he's going to stay on it and it's going to continue to be something that he's going to throw into the mix whenever we want anything else.

Dick Wiley: Yes, but I don't think it will ultimately be passed as legislation and I think broadcasters, a lot of broadcasters, have stepped up to the line and provided more free time before elections. And, as you suggest, Greg, I think there's an awful lot of coverage out there. I

don't think I went to the polls uniformed and I doubt that many Americans did.

Victor Miller: Recently, Wade, the ABC network gave affiliates a five year right to assign its network affiliation agreements, which can be particularly good for ABC affiliates in a deregulated world. Why do you think Walt Disney Company decided to take that tack with its affiliates in light of comments Mr. Eisner made about affiliates a couple years ago. Is this a sign?

Greg Schmidt: Let me just step in and just say I think it's because they had such—the ABC affiliates association has such able counsel.

Victor Miller: That's a fair...that could be it. And, also, is this a sign that the networks and affiliate relations could be thawing or am I just...wishful thinking?

Wade Hargrove: Well, the network affiliate relationship is an interesting relationship. I've been...I've had a seat on the fifty yard line for twenty years watching it. And it is a fascinating relationship; it's a mutually dependent relationship. It has characteristics of a love/hate relationship. Each party needs the other. And each party works in concert and in partnership toward the goal of trying to amass the largest possible audience for the programming—the networks' programming. On the other hand, they squabble about how to split the money up. And also they squabble about control of the station and the station's time. The network wants to control the

time periods from the station, the station wants to retain its right to make specific program decisions...on a program by program basis. So, there's a built-in tension in the relationship and the relationship, of course, has built an incredible broadcast system in the country. Why did ABC suddenly agree to abandon its practice and, in certain cases, abusing the assignment process to renegotiate the economics of an existing contract, which it had been doing for some five to six years? It was part of a negotiated resolution on a wide range of issues, renewal of the rights to Monday Night Football, calling for affiliate contribution in the aggregate of some thirty-four million dollars. Reaffirmation of the existing arrangement on repurposing and providing certain windows of exclusivity for network programming, renewal of the soap channel deal that the network had with its affiliates. So it was part of a larger resolution of a number of issues and I think the parties felt that it...that was an example of the relationship working in a very functional rather than dysfunctional mode. The negotiations started last January and they were concluded in early September...of this year. And, there was a lot of discussion about it and the parties, I thought, exercised very good judgment in the way they dealt with each other and it was very professional. And tried to find the areas where they could create value for each other. So, I think it's good news for the network affiliate relationship.

Victor Miller: In terms of the Telecommunications Act of Ninety-Six...the Biannual Review requires that the Commission look and renew tests, only keep rules in place that are necessary in the public interest. The word necessary could likely come under a lot of scrutiny— that word and whether that means absolutely, positively, has to be there overnight kind of necessary or whether it's convenient necessary. What is this debate all about and why is it important, Dick?

Dick Wiley: Well, I think it is a very important situation but I want to say even if the Commission ends up saying—the courts end up saying that necessary in the public interest only means convenient, the basic standard for review now; the Court has also said there's still a presumption for...repeal built into the Nineteen Ninety-Six act. And, so, either way, I think the Commission has got a burden here to show that if it's going to maintain these rules there has to be a rationale better than the ones that they've given in the past that justifies the rules. I think Chairman Powell fully recognizes that, as I said before. And I think the court has waited—the court has relented on necessary meaning essential or indispensable at the request of the Commission and has said, we'll wait and see but we're going to look at this issue again. So, whether it's necessary it's going to have that higher standard or review or it's the

presumption...either way I think the Commission has its work cut out for it; it's on some of these old rules.

Greg Schmidt: And this is something that when we were lobbying for this bill, I don't think all of us thought—most of us thought this was a terribly significant provision because we were really focused on the specific regulatory relief we got in the Ninety-Six act. It turns out to be, I think, something...one of the most important things we did. And, in retrospect, it should be. I mean, look how long we have gone without a lot of these rules getting any reexamination, much less a serious reexamination. And as long as this provision is around, however you define necessary, I think we're at least going to be satisfied that the Commission's going to have to take a hard look at what the reality currently is and not what it was fifteen or twenty years ago.

Victor Miller: Wade, could you just talk a little about the right to reject rule? And is there a compromise position on this between the networks and the affiliates do you believe?

Wade Hargrove: Um...

Greg Schmidt: Could you give away your position in an negotiation?

Victor Miler: That's sensitive I...

Wade Hargrove: No, it's not sensitive at all. I mean, this is...this is a very public dispute. There's some difference at the margin, I think, of what the rule really means. First of all, the Commission has statutory

authority to regulate networks under section three-oh-three of the act. And it has...given stations a specific mandate under three-ten-D of the act to retain control and exercise...exercise control over the programming and operations of the licensee station every second of the day. And, even in the absence of right to reject, if the Commission had not enacted a rule, if it repealed the right to reject rule, in my view, the three-ten of the act would still require that affiliates retain the flexibility to make program decisions on a program-by-program basis; and, therefore, retain the right to reject programs. What the rule itself says, quite simply, is that the licensee shall have the right to substitute a alternative program in lieu of the network program if it believes the content of the network program to be unsuitable for its viewers—obscenity, whatever...content unsuitability...or, if it believes the alternative program would better serve national, local interests of its viewing area. And, the question arises the networks believe, in fairness to the network position, the networks contend that the affiliates cannot use that rule to take what they characterize as cheap economic preemptions; that is, to say blow out a low-performing network program and put on what the affiliate might be able to do on a one time only basis; a program that might achieve a higher rating. Or a program in which the affiliate might have more inventory. And, the affiliate position is there's nothing in the act or

nothing in the rule that speaks to economics; it's not an economic decision. That the affiliate simply has to have a good faith belief, and we're talking about good faith, we're not talking about contrived; but a good faith belief that the network program...is not as responsive to the interests of its community as the alternative program. And, in fact, if the alternative program makes more money for the affiliates, for the affiliate, so be it; that's inconsequential, that's not part of the analysis. And the tension has arisen because of the vertical integration. I mean, this tension has always existed between networks and affiliates. The networks mandate and job responsibility...for affiliate relations, the network level is to get clearance of the shows. The affiliate, on the other hand, is faced with the responsibility of trying to provide the best, most competitive programming for its service area...regional sports, local sports...traditionally the networks have recognized that in order to maintain its relevancy as a local station, a station has to be sensitive to local program needs. On the other hand, uh, with the ownership of programming by the networks now and the I-Ever and the repeal of the Fin-Syn rules and the syndication rules; the networks have an interest in the aftermarket. The vitality of its network programming and, therefore, wants those shows cleared. It's a natural tension. The issue is pending at the Commission. We believe about all the arguments that could ever

be made have been made for and against the petition that the affiliates filed. And we hope the commissioner will address those arguments and issue a decision.

Victor Miller: But is there a compromise position where the...obviously one argument is you want to show ACC basketball down in Virginia on a local station—you should be able to preempt the show and show ACC basketball. The major complaint [from the broadcast networks] has been, "I'm going to be short on my budget so I want to blow out that show and put on a movie." I've got all the inventory, I make my budget and the network winds up without a clearance and spent a hell of a lot of money not getting a clearance? Is there a compromise position where network and the affiliate group can get together and say, look, you got to make me whole to this extent and then you keep the economics above that but at least you made me whole on my economics of not clearing that show...

Dick Wiley: I think a number of the networks have given the affiliates, and Wade knows this, a large basket of acceptable preemptions. And I think in many instances that seems to work. In some instances there are still some...with several of the networks still some pressure out there. But I think there's been progress made in the relationship and I just want to say I've got clients on both sides of this abyss and...

Victor Miller: And you're with your client.

Dick Wiley: And I'm with my clients, right. But, beyond that, I think it's very important that solutions be found to this. I'd rather see them be found in the private sector than at the Commission because I think this relationship has to work. Broadcasters...biggest problems lie outside of the industry as far as competitive pressures are concerned. And I think they need to find solutions to work together and I think that's happening in most instances—certainly the ABC affiliate agreement that Wade had such an important role in; it was a good step in that direction. I agree with you.

Wade Hargrove: Dick's right. I think while this petition has been pending the relationship on some of these very sensitive issues that have divided the two parties, the relationship has improved. The right to reject issue is one that's in front of the Commission has nothing to do with the application of the rule to any specific program; it simply has to do with whether the—the issue before the Commission is whether the contractual language in these contracts violates the rule. We're asking for a declaratory ruling with respect to the words of the contract, not how it may be applied in a specific context. But the relationship has improved and there have been a number of...several filings by the affiliates to document the fact that some of the original points that were raised in the petition with respect to some networks have no longer...no longer exist.

Greg Schmidt: Before my current life I was counsel to the CBS affiliates' association and this thing has been going on for many, any years. And, in fact, some of the things that were brought up today; the fact that, for example, the third placed morning show would probably benefit everybody involved, including the network involved in its O and Os if it were replaced with local time. We've been fighting over the allocation of local versus network time forever. There was a suggestion made that maybe there would be an hour...that one of the networks would benefit also through its O and Os and reduce its expenditures by doing an hour less of prime time. Maybe. All of those negotiations...this rule just means they've got sit and talk to us about those issues and negotiate them and there does seem to be, frankly, I mean quite aside from the financial interest rules there's something in the network economics and mind set that when people go to the network, they lose sight of how to maximize the total pie for everybody in terms of taking into affiliate interests. And the rule has sort of balance that, which I think is an irrational mind set for the most part that we really could find a way to make the pie bigger for everybody. And it's great and encouraging that we're beginning to have talks that I think have the potential to really do that on all the networks.

Dick Wiley: Well, as far as irrationality goes, I mean, I think we have to, as Wade suggested, I mean, they do spend a great deal of money to

develop these programs and, therefore, it is essential for them to get heavy percentages of clearances. On the other hand, I agree the local stations have a very important—if we want to have a system of localism that local stations have to maintain...some control over the programming that they put into their local community. So, I'm saying I think practical solutions can be worked out here. I'd rather see them, again, worked out in the private sector.

Wade Hargrove: The irony, if I may add a comment, the irony of it is the debate is not over clearance of good programs...there's nothing wrong with a relationship that a few good shows on all four networks probably wouldn't fix. The debate is over the extent to which an affiliate is compelled by its network to clear a show that has no vitality. And particularly with the re-purposing now by the networks, which is understandable, nobody's critical of that, but this is a very, very important proceeding because the affiliate wants to have the Commission validate the fact that—which has always been the Commission's position—that it does have a right to make a judgment about the programs on its station and cannot be penalized by its network for rejecting a network program; that's what it's all about.

Victor Miller: Let's talk about, last question before we turn it over to the audience, Dick, we'd be remiss not to get your update on what you think about the Tauzin and Powell plans on digital television.

Dick Wiley:

I would echo some of the statements that were made in the previous panel. I think the government...I was a big critic; the government really did not give us leadership in the development of this transition, it has done so now. Chairman Powell and the digital television task force under Rick Chessen, I think, stepped up, come up with an interesting plan...and just put the plan out there. He's working with the industry to try to get private sector solutions to many of these issues. I really think the whole issue of cable interoperability is just a few weeks away, perhaps, from a terrific solution. That's been a huge problem that you buy the set and take it home and it doesn't work on cable. For seventy percent of the audience that's a real impediment. I think that's going to change. I think the programming is developing, the receivers are terrific, the copy protection is the big one, assuming cable interoperability is out there, that needs to be solved. And, of course, the Commission should step up to the plate now and decide this cable carriage issue. I do agree also that the idea of experimentation to...to encourage broadcasters to look at standard definition multicasting during the day time. I think ultimately they'll develop business plans that will make them money in a second revenue stream. I think that's important. If it's not carried, that's a real problem. So I think both Chairman Powell and Billy Tauzin and other people on the Hill deserve a lot of credit for getting the leadership but the

industry is also, I think, moving to this transition. I'm more encouraged about the DTV transition than I've ever been before. I think it's going to work.

Victor Miller: Are there any questions from the audience? We'll go this way.

Chris Gleason: Yes, hi, I just have a few questions. One, what is the FCC's position today with regards to open access and rate regulation? And the second part, of the three Republican commissioners, which one may be a swing factor to potentially slowing the deregulatory forces?

Dick Wiley: Well, on the latter, none of the above is the answer I would give there. I think all three commissioners on the Republican side, I hope on the other side too, will see that we need change. So I don't see a swing vote there? You want to comment on the other issue?

Greg Schmidt: I'm really not up to speed on the others. I think the open access issue is—well, rate regulation is at least for the moment dead. It may revive. I'm particularly optimistic, since it's one of my little pet peeves, the issue that's come up a couple of times today, which is the basic tier arrangement and the move to a la carte. I think that would be potentially of enormous significance to us and would help to highlight the kinds of cross-subsidy issues that we've been hearing about today, which I think, unquestionably have prejudiced us. And that if we could move to a la carte, it would be great. And, of course, the irony there is, of course, the small cable operators

are coming in petitioning the Commission to hold that the retransmission arrangements that we've gotten, which the cable industry forced on us, are a tying arrangement and a violation of the antitrust laws...when they're tying fifty or sixty channels together and forcing the consumer to buy those. I think there's no small irony there and McCain is firmly focused on that one and I hope maybe he'll do something about that in his upcoming set of hearings that he's scheduling for the Commerce committee.

Dick Wiley:

And I should say the open access rule I think...maybe you'll want to comment on this as well, Wade...I think it's all part of the broadband proceeding that the Commission's got going or a series of proceedings. And the question is whether or not we're going to have the same kind of deregulatory regimen for the telephone companies for their DSL service as we have for the cable modem services. And I think the Commission's got to solve that issue.

Wade Hargrove:

Yes, we really moved past the open access issues. ISPs and local governments that have tried to regulate, mandate open access or forced access, as the cable industry chooses to characterize it...all those court cases have been victories for the cable industry. And the Commission has not mandated it and the cable MSOs have pretty much taken most of the wind out of those sails by offering, opening up their facilities to other competitive Internet service providers. But Dick's point about regulatory parity between

regulations of Internet access by—which is provided by telephone companies and that provided by cable—is an emerging issue that's going to occupy a lot of attention both at the state level and at the federal level.

Victor Miller: Are there any other questions? If not, we will give you the rest of your Tuesday back [laughs]. And thank you so much for all of you who made it the whole day.